

ESTTA Tracking number: **ESTTA213744**

Filing date: **05/27/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Atlantis Holdings (Bahamas) Limited
Granted to Date of previous extension	05/25/2008
Address	c/o Executive Offices, Coral Towers Paradise Island, PO Box N-4777 Nassau, BAHAMAS

Domestic Representative	James R. Sims, III 1111 Pennsylvania Avenue, NW Washington, DC 20004 UNITED STATES fgordon@morganlewis.com Phone:202-739-3001
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### Applicant Information

Application No	77096884	Publication date	11/27/2007
Opposition Filing Date	05/27/2008	Opposition Period Ends	05/25/2008
Applicant	Six Continents Hotels, Inc. Three Ravinia Drive, Suite 100 Atlanta, GA 303462149 UNITED STATES		

### Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: ENTERTAINMENT SERVICES, NAMELY, WATER PARK SERVICES
Class 043. All goods and services in the class are opposed, namely: RESORT HOTEL SERVICES

### Applicant Information

Application No	77095791	Publication date	11/27/2007
Opposition Filing Date	05/27/2008	Opposition Period Ends	
Applicant	Six Continents Hotels, Inc. Three Ravinia Drive, Suite 100 Atlanta, GA 303462149 UNITED STATES		

### Goods/Services Affected by Opposition

Class 041.

All goods and services in the class are opposed, namely: ENTERTAINMENT SERVICES, NAMELY, WATER PARK SERVICES

Class 043.

All goods and services in the class are opposed, namely: RESORT HOTEL SERVICES

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Prior common law use and likelihood of confusion under Trademark Act Section 43(a)

## Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77140610	Application Date	03/26/2007
Registration Date	NONE	Foreign Priority Date	11/24/2006
Word Mark	AQUAVENTURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: Printed publications, namely, brochures and booklets relating to resorts, amusement parks and water parks; books, namely, gift books and guide books featuring resorts, amusement parks and water parks; prints in the nature of posters, photographs and pictures, namely, posters, photographs and pictures of resorts, amusement parks and water parks; postcards, namely, postcards featuring resorts, amusement parks and water parks; printed matter, namely, stationery, note cards, envelopes and business cards; gift boxes of paper or cardboard; maps Class 028. First use: Playing cards and puzzles		

Attachments	77140610#TMSN.jpeg ( 1 page )( bytes ) ~6177807.pdf ( 5 pages )(243971 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Signature	/jrs/
Name	James R. Sims, III
Date	05/27/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ATLANTIS HOLDINGS (BAHAMAS)  
LIMITED,

Opposer,

v.

SIX CONTINENTS HOTELS, INC.,

Applicant.

In re Application Serial Nos. 77/096,884 and  
77/095,791

Marks: AQUAVENTURE and  
AQUAVENTURE BY HOLIDAY INN

Opposition No. \_\_\_\_\_

**CONSOLIDATED NOTICE OF OPPOSITION**

Opposer, Atlantis Holdings (Bahamas) Limited ( "Opposer"), believes it will be damaged by registration of the marks AQUAVENTURE, shown in Application Serial No. 77/096,884, and AQUAVENTURE BY HOLIDAY INN, shown in Application Serial No. 77/095,791 (collectively, "Applicant's Marks"), both filed by Applicant Six Continents Hotels, Inc. Opposer opposes registration of Applicant's Marks under the provisions of Sections 2(d), 13 and 43(a) of the Trademark Act of July 5, 1946 (the "Lanham Act"), 15 U.S.C. §§ 1052(d), 1063 and 1125(a).

As grounds for opposition, Opposer alleges that:

1. Opposer is a company organized and existing under the laws of the Bahamas, having a principal place of business at Atlantis Paradise Island, Coral Towers Executive Office, P.O. Box N4777, Nassau, Bahamas.
2. Effective from November 24, 2006, Opposer filed an application with the United States Patent and Trademark Office ("PTO") for federal registration of the mark AQUAVENTURE, shown in Application Serial No. 77/140,610, for use in connection with,

among other goods, a variety of printed publications and other materials featuring and/or relating to resorts, amusement parks, and water parks in Class 16 (“Opposer’s Application”).

3. Opposer’s Application, filed with the PTO on March 26, 2007, is based both on Opposer’s intent to use the mark under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), and on Section 44(d) and 44(e) of the Lanham Act, 15 U.S.C. § 1126(d) and 1126(e), relying on Opposer’s Bahamian application for AQUAVENTURE (Application No. 30040).

4. The filing date of Opposer’s corresponding Bahamian application for AQUAVENTURE is November 24, 2006; accordingly, the constructive priority filing date in the United States for Opposer’s Application is November 24, 2006.

5. The PTO suspended Opposer’s Application on January 2, 2008 pending submission of the registration certificate for the underlying Bahamian AQUAVENTURE application.

6. Opposer has used the AQUAVENTURE mark in connection with, among other things, amusement park and water park services, since prior to January 31, 2007.

7. On January 31, 2007, Applicant filed an intent-to-use application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), for federal registration of AQUAVENTURE BY HOLIDAY INN, Serial No. 77/095,791, used to identify “hotel and water park resort services” in Class 43. In response to an office action issued on May 30, 2007, Applicant amended its application for AQUAVENTURE BY HOLIDAY INN to identify “entertainment services, namely, water park services” in Class 41 and “resort hotel services” in Class 43.

8. On February 1, 2007, Applicant filed an intent-to-use application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), for federal registration of AQUAVENTURE, Serial No. 77/096,884, used to identify “hotel and water park resort services” in Class 43. In

response to an office action issued on May 30, 2007, Applicant amended its application for AQUAVENTURE to identify “entertainment services, namely, water park services” in Class 41 and “resort hotel services” in Class 43.

9. Applicant’s Marks, Application Serial Nos. 77/096,884 and 77/095,791, were published for opposition in the *Official Gazette* on November 27, 2007.

10. The Trademark Trial and Appeal Board extended until May 25, 2008, the time within which to file Notices of Opposition against Applicant’s Marks by granting Opposer’s timely requests for extensions. As May 25, 2008, fell on a Sunday and the following day, Monday, May 26, 2008, was a federal holiday on which the PTO was closed, Opposer timely files this Consolidated Notice of Opposition on Tuesday, May 27, 2008.

11. On information and belief, Applicant has not yet commenced actual use of Applicant’s Marks for either “entertainment services, namely, water park services” or for “resort hotel services.”

12. Opposer’s application for AQUAVENTURE has priority over the applications for Applicant’s Marks as Applicant’s applications were filed on January 31, 2007 (for AQUAVENTURE BY HOLIDAY INN) and February 1, 2007 (for AQUAVENTURE) after November 24, 2006, the effective constructive priority filing date of Opposer’s ‘610 Application.

13. Opposer also has priority over Applicant’s Marks as Opposer has used the AQUAVENTURE mark before any actual use by Applicant of Applicant’s Marks and before the January 31, 2007 and February 1, 2007 filing dates for Applicant’s Marks.

14. Opposer believes it will be damaged by registration of Applicant’s Marks under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that the Applicant’s Marks so

resembles Opposer's AQUAVENTURE marks as to be likely, when used on or in connection with the services identified in the applications for Applicant's Marks, to cause confusion, mistake or to deceive consumers, with consequent injury to Opposer and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

15. Opposer believes it will be damaged by registration of Applicant's Marks under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that the subject marks so resemble Opposer's AQUAVENTURE mark as to be likely, when used on or in connection with the services identified in the applications for Applicant's Marks, to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant or Applicant's services with Opposer or its goods or services, constituting false designation of origin or false or misleading descriptions and representations in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

WHEREFORE, Opposer believes that they will be damaged by registration of Applicant's Marks, shown in Application Serial Nos. 77/096,884 and 77/095,791, and respectfully requests that the registrations sought by Applicant be refused.

Dated: May 27, 2008

Respectfully submitted,

By: /s/ James R. Sims III

James R. Sims III

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Attorneys for Opposer:

Atlantis Holdings (Bahamas) Limited

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Consolidated Notice of Opposition has been sent via electronic mail (with the consent of Applicant's counsel) on this 27th day of May 2008 to:

Albert Robin  
Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, NY 10036-6710

*Counsel for Applicant*

/ James R. Sims III /  
James R. Sims III